

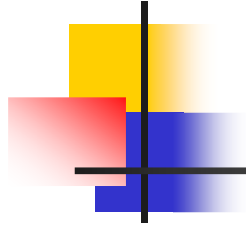
Non-Citizen Domestic Violence Cases A Public Defender Perspective October 28, 2008

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Task Force on Domestic Violence in Immigrant Communities



CURRENTLY, CONNECTICUT'S
CRIMINAL JUSTICE SYSTEM DOES
NOT COMPREHENSIVELY ADDRESS
DOMESTIC VIOLENCE ISSUES
WITHIN THE IMMIGRANT
POPULATION.



CITIZEN'S EXPERIENCE vs. NON-CITIZEN'S EXPERIENCE

This presentation will examine the criminal justice system's disparate treatment of non-citizens compared with U.S. citizens.



Presentation Objectives

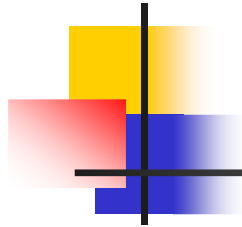
1. To highlight the obstacles immigrant defendants and victims face in domestic violence cases.
2. To make recommendations concerning how better the criminal justice system might handle immigrant domestic violence cases.



OVERVIEW OF ISSUES

We begin this presentation with a look at the various issues that come into play when we focus on domestic violence in the immigrant community.

- Language barriers
- Cultural differences
- Protective orders
- Discriminatory procedures
- Immigration consequences



LANGUAGE BARRIERS

Non-English speaking defendants and witnesses—including victims—are not being provided adequate access to the criminal justice system due to pervasive language barrier issues.



LANGUAGE BARRIERS

- Language barriers routinely play a role in the quality of police investigations.
- Police may not be able to effectively interview all parties due to the unavailability of interpreters.



LANGUAGE BARRIERS

- Communication problems often begin when statements are taken by law enforcement personnel without appropriate interpreter and translator services.



LANGUAGE BARRIERS

- These problems are compounded by the fact that police generally do not record the use of interpreters or translators in their investigative reports.



LANGUAGE BARRIERS

- Thus, at the time of arraignment court personnel are unable to adequately assess the accuracy of incident reports as they pertain to non-English speaking defendants and witnesses.
- This issue may persist throughout the pendency of the case.



LANGUAGE BARRIERS

- Interactions with court personnel are equally troublesome.
- The availability and competence of judicial department interpreters and translators is often an issue.



LANGUAGE BARRIERS

A defendants' constitutional right to be "linguistically present" in criminal proceedings is compromised when the police, courts and program providers are unable to properly overcome language barriers.



CULTURAL DIFFERENCES

Beginning with police investigations and extending throughout the pendency of domestic violence cases, non-English speaking immigrants (defendants and victims alike) face a variety of discriminatory practices due to the criminal justice system's lack of cultural competency.



CULTURAL DIFFERENCES

- For example, the conduct of an immigrant defendant who keeps his head down and eyes lowered when he speaks may be misconstrued by law enforcement and court personnel.
- In his culture this behavior is regarded as a show of respect. In the United States we regard this same behavior as a sign of dishonesty.



CULTURAL DIFFERENCES

- Police, court personnel, and program providers are not receiving enough on-going diversity training to ensure cultural competency.
- This failure to recognize and honor cultural distinction results in systemic bias and discriminatory policy and practice.



PROTECTIVE ORDERS

Protective orders often create numerous unintended consequences for the immigrant defendant, victim and other family members.



PROTECTIVE ORDERS

- The issuance of a protective order often effectively punishes those it seeks to protect in the immigrant population.
- The cultural identity of the immigrant family and community is disregarded as the court imposes an order that singularly reflects American values.



DISCRIMINATORY PROCEDURES

- Bail determination: The tool currently in use by CSSD for bail recommendations promotes higher bonds for non-citizens than for similarly situated U.S. citizens.



DISCRIMINATORY PROCEDURES

- The immigrant's place of birth and citizenship status are considered as negative factors in the bail determinations.



DISCRIMINATORY PROCEDURES

An immigrant's ties to the community and length of residence in the area are more appropriate inquires for bail determinations.



DISCRIMINATORY PROCEDURES

- For the immigrant population, the court's focus on an individual's place of birth or legal status in this country belies his true connections to the community and risk of flight.



DISCRIMINATORY PROCEDURES

- Place of birth and citizenship status also frequently are raised as negative factors during pretrial negotiations and in Presentence Investigation Reports.



DISCRIMINATORY PROCEDURES

There is an appearance of bias and racial, ethnic, and religious discrimination resulting from this focus on place of birth and legal status.



IMMIGRATION CONSEQUENCES

- Any non-citizen defendant with domestic violence charges may be faced with immigration consequences.



IMMIGRATION CONSEQUENCES

An individual's immigration status is irrelevant to the state criminal court proceedings



IMMIGRATION CONSEQUENCES

Non-citizen legal status
determinations can only be made by
an immigration court.



IMMIGRATION CONSEQUENCES

Local law enforcement and state criminal justice agencies do not have the ability or authority to determine any person's legal status in this county.

For this reason, non-citizens should never be described as "legal" or "illegal" by these entities.



IMMIGRATION CONSEQUENCES

Law Enforcement (police, prosecutors)
and
Court Officials (judges, CSSD, judicial marshals,
and victim advocates)

SHOULD NOT inquire about or
report the immigration status
of a defendant to Immigration and Customs
Enforcement (ICE)



IMMIGRATION CONSEQUENCES

- Police
- CSSD (Bail, Family Relations, Probation)
- Judicial Marshals
- Victim's Advocate
- State's Attorney

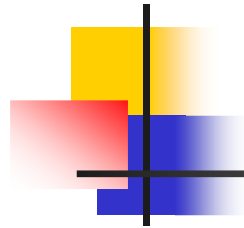
Each of these entities must consider the impact on the victim and his/her family, and the immigrant community at large, by maintaining policies of reporting non-citizens to ICE.



DOMESTIC VIOLENCE DOCKETS

PURPOSES

1. Protection of victims of domestic violence;
2. Holding abusers accountable; and
3. Preventing domestic violence in future generations.



DOMESTIC VIOLENCE DOCKETS

THE SECOND AND THIRD PURPOSES
ASSURE THE FIRST

THE U.S. CITIZEN EXPERIENCE VS. THE NON-CITIZEN EXPERIENCE

******AN OVERVIEW******

U.S. CITIZEN CLIENT

Focus is on:

- Substance abuse treatment
- Mental health treatment
- FVEP
- EVOLVE
- Disposition with Probation/Jail

THE NON-CITIZEN CLIENT

Focus is inconsistent:

Non-citizen defendants, witnesses and victims are confronted with a number of issues that often are not properly evaluated and addressed by law enforcement agencies, social service providers and the courts.

THE NON-CITIZEN CLIENT

- Any non-citizen defendant with domestic violence charges may be faced with dire immigration consequences.

THE NON-CITIZEN CLIENT

- Immigration and Customs Enforcement (ICE) may initiate removal proceedings against the non-citizen defendant during or long after the disposition of his case.

THE NON-CITIZEN CLIENT

- If the defendant is not held on bond, he may end up in immigration detention or be removed while his state criminal court case still is pending.

THE NON-CITIZEN CLIENT

- The action of immigration authorities often interferes with the non-citizen defendant's due process rights in state criminal court proceedings.

THE NON-CITIZEN CLIENT

- It also interferes with the defendant's access to pretrial intervention programs such as the Family Violence Education Program.

THE NON-CITIZEN CLIENT

- Currently, immigrants in ICE detention are not transported to their Connecticut state criminal court proceedings.

THE NON-CITIZEN CLIENT

- If a non-citizen defendant is detained or removed by ICE while his state case is pending, he will miss his court date and he may be rearrested.

THE NON-CITIZEN CLIENT

- The existence of a rearrest warrant has a serious negative impact on the defendant. He will not be admitted back into the United States with such an outstanding warrant.

THE NON-CITIZEN CLIENT

- The stress of detention and removal complicates any underlying domestic violence issues and is a precursor to recidivism.

Non-Citizen Client – Pretrial Experience

ICE DETAINER

(person remains incarcerated)

- Incarceration –
 - If bond is not posted, held in state Department of Corrections facility.
 - If bond is posted, held in a federal detention facility in another state. Currently federally detained immigrant defendants are not transported to CT state court proceedings.
- Cannot participate in any program (EVOLVE, FVEP) or other form of treatment.

CONSEQUENCES FOR VICTIM

- Loss of financial support
- Loss of residence
- Destruction of family including loss or threat of losing custody of children
- Possible removal from U.S.
- Shame and blame from family members and ostracized from the immigrant community

REAL LIFE WORST CASE SCENARIO

The case of T.I.

- Charges =
 - Breach of Peace (argued w/ wife – alcohol)
 - Risk of Injury (2 cts) (kids witnessed argument)
- Alcohol and substance abuse history
- Came to U.S. at 9 mos old with parents
- Married w/2 children (12 & 14-both born in U.S.)
- All charges nolle BUT
- Court Official had already reported his “immigration status” to ICE
- Removed to Macedonia

REAL LIFE WORST CASE SCENARIO

(The case of T.I. continued)

Impact on the Victim

- ❖ Devastation
- ❖ Financial Ruin
- ❖ Loss of Residence – moved in w/his family
- ❖ Loss of husband and father of children
- ❖ Financial Cost for immigration attorney

**T.I.
was eligible for
FVEP**

NON-CITIZEN CLIENT: BEST CASE SCENARIO

Client With No ICE Detainer

- Client is out on bond
- Faces obstacle to participation in programs due to language barriers.
- Faces obstacle to participation in programs even when language isn't a barrier. Access to FVEP and EVOLVE is restricted due to financial and geographical (transportation) issues.
- Faces an obstacle to participation due to cultural/religious/gender considerations in EVOLVE.
- EVOLVE participation may require a conditional guilty plea.
- 3 unexcused absences = expulsion from program. A late arrival is regarded as an "unexcused missed class."
- Many conviction dispositions lead to removal from U.S.

Consequences for Victim

- Spouse is out of the home longer period of time.
- Family incurs financial hardship.
- Reunification of family, if desired, is postponed and the relationship is damaged
- The treatment modality is inappropriate for victim's culture/religious/gender beliefs
- Numerous consequences if spouse is convicted and later put into removal proceedings.
- Faces ostracism from family and immigrant community.

Victim- Driven System

If a victim wants vigorous prosecution
then

it is considered “victim driven”

BUT . . .

“Victim- Driven” is a Myth

- Victims Who Desire Reunification with Spouse
 - are disrespected
 - are disregarded
 - are disempowered by the system
 - are judged for their cultural/religious beliefs concerning marriage and family

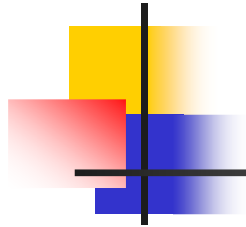
Additional Problems with Current DV Cases

- Disposition ***disparity*** among jurisdictions
- Dangers of false claims – U Visas
- No existing treatment programs for many languages
- No treatment for women accused of being abusers in same or opposite sex relationships
- Treatment is narrowly focused on heterosexual orientation

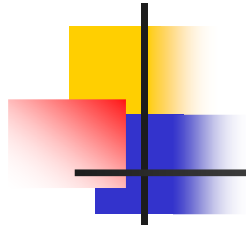


Today's Situation

The state judicial system and program providers lack the cultural knowledge and sensitivity to effectively identify and address immigrants' domestic violence issues. Language barriers compound this problem.



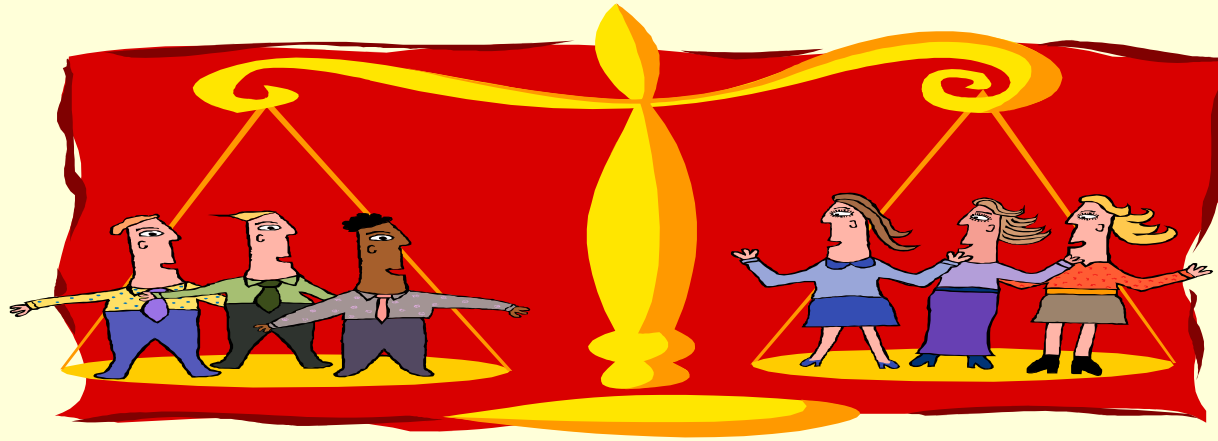
- The resulting systemic devaluation of immigrant cultural identity significantly interferes with effective intervention techniques.



In addition, the threat of detention and removal significantly undermines the goal of preventing domestic violence in the immigrant community.

Recommendations

1. Eliminate language barriers
2. Increase cultural competency (including religious and gender)
3. Do not engage in immigration enforcement activity
4. Consistent policy for DV dispositions after successful completion of EVOLVE
5. Supplement the theoretical framework and treatment approach of EVOLVE
6. Male/female prosecutor teams for DV dockets
7. Affirmative defense where the victim initiates contact & there is a protective order



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Attorney Elisa L. Villa is the Supervisory Assistant Public Defender for GA 17, Bristol of the Connecticut Division of Public Defender Services. In 2005, she and Attorney Jorge Baron, an immigration attorney with the New Haven Legal Services Association, developed and implemented a continuing immigration consequences training program for criminal defense and immigration attorneys. Attorney Villa regularly provides consulting services and training for legal services agencies, judicial department personnel; bar associations; and, non-governmental immigrant and refugee organizations. She currently is a project consultant for the Yale Law School Workers' and Immigrants' Rights Advocacy Clinic under the direction of Professor Michael Wishnie.

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Attorney Theresa M. Dalton is the Supervisory Assistant Public Defender at G.A. 4 in Waterbury, Connecticut. She has worked in both private practice in New York and Connecticut, and as a Connecticut Assistant Public Defender since 1987. She has worked for the Connecticut Division of Public Defender Services in Part A in Waterbury, as an Appellate Attorney in the Legal Services Division, and as the Supervisory Assistant Public Defender in Waterbury G.A. 4. She represented defendants in connection with the Domestic Violence Docket in Waterbury for approximately 6 years and currently supervises three attorneys in her office who are assigned to that Docket.